

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-6077

UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA and JOHN LYONS :
of the INTERNAL REVENUE SERVICE,

Petitioners-Appellees,

v.

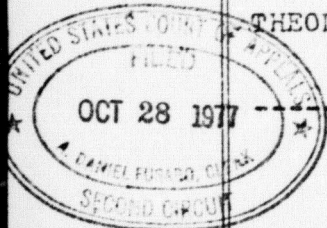
THEODORE SLUK,

Respondent-Appellant.

APPELLANT'S REPLY

C.A. Docket #77-6077

B
P/S



The government has demonstrated utter bad faith in this proceeding. For instance, the fault of appellant, and appellant having challenged the summons, the District Court was not afforded an opportunity to scrutinize the summons carefully to determine if it seeks information relative to a legitimate investigative purpose within the purview of U.S. v Coopers and Lybrand, 413 F.Supp. 942. It seems reasonable that appellees were happy and contented with this result because they did nothing to directly inform the District Court that the motion should not have been granted by default. It seems to appellant that this failure alone on the part of government renders the order appealed from null and void and that the summons should be dismissed so as to finally end this harrassment.

Appellees Brief consists of two(2) points, neither of which undertakes to answer the six(6) points contained in Appellant's Brief.

As to Point 1. Appellees Brief does not explain, excuse or otherwise indicate the basis for its conclusion that any reasonable person would mistakenly conclude that INCOME TAX EVASION was not related to a criminal proceeding or intention on the part of the Internal Revenue Service to pursue criminal proceedings. Appellees Brief does not inform this Court and it did not inform

the District Court that it has no criminal proceeding pending and that it is not pursuing the summons for the purpose of instituting such proceeding. Consequently, it is reasonable to assume that the summons was not issued for a legitimate purpose.

As to Point 2. The United States Attorney deceived and misled the District Court and continues to mislead this Court. For instance, at page 4 of Appellees Brief it is falsely stated that the District Court "properly rejected", for all practical purposes, appellant. The District Court did not reject anything. It simply granted appellees' motion by DEFAULT. So, the attempts of appellees to mislead the Court continues, undiminished. For instance, the fact is that the government has chosen to mention at page 5 of Appellees Brief a description of United States v Sluk, 74 Civ 944, while it has chosen to remain silent in this Court as well as in the District Court concerning release of a Notice of Levy in the sum of \$82,908.83, in which it informed the Associate Director of the Dormitory Authority of the State of New York as follows:

"This levy is intended to seize any indebtedness owing from Penn-York Construction Corp. to Perlstein Builders, Inc. and from Perlstein Builders, Inc. to Taconic Concrete Structures, Inc. on a contract dated April 25, 1966 on which the balance is subject of a mechanics lien action in Supreme Court, Ulster County brought by Taconic Concrete Structures, Inc. against Perlstein Builders, Inc., Penn-York Construction Corp. and the State of New York."

NEITHER THE NOTICE OF LEVY NOR THE RELEASE OF LEVY WAS RECEIVED BY APPELLANT.

The Notice of Levy and release of funds by the I.R.S District Director Donald T. Hartley at Albany predate the lawsuits (74 Civ 944 consolidated with 73 Civ 1848 on November 7, 1974) by several years. The Notice of Levy is for taxes claimed from appellant for the 4th quarter of 1966 and the 1st quarter of 1967 to which reference is made on page 5 of Appellees Brief. The 73 Civ 1848 case is entitled U.S. v Taconic Concrete Structures, Inc. and Perlstein Builders, Inc.. The docket sheet indicates that defendant Perlstein was represented by Cooke, McBride, Davis and Greenberg of

Monticello, New York. According to the docket sheet 73 Civ 1848 was instituted on April 25, 1973 when complaint filed and summons issued. It should be noted that both cases(73 Civ 1848 consolidated with 74 Civ 944) were instituted by the government AFTER appellant's letter of January 2, 1973(A-10 Appellant's Brief), addressed to I.R.S. District Director at Albany, New York.

The Perlstein Builders, Inc. involved in 73 Civ 1848 had a contract with appellant which called for Perlstein to make all payrolls as required. The period of time involved was the 4th quarter of 1966 and the 1st quarter of 1967. This is the same period to which government makes reference in Appellees Brief at page 5.

As to Point 3. The Appellees have not explained how they obtained an order based upon their motion granted by default, containing provision for the issuance of "a writ of body attachment" without notice or hearing to appellant on a charge of contempt of court. It should be noted that it appears that this provision was especially designed so as not to attract attention to its presence in connection with a motion granted by DEFAULT.

As to Point 4. The due process granted by the United States Constitution has been denied to appellant by appellees, as evidenced by government's wilful failure and refusal to supply pertinent requested information, especially information as requested in exhibit A-10 of Appellant's Brief.(letter of January 2, 1973), from the I.R.S. District Director at Albany who, quite obviously, was possessed with personal knowledge of this corrupt mess on the part of the government and its co-conspirators. Also, it seems indefensible that under such circumstances as prevail herein the government would have so boldly and brazenly undertaken to recover money from appellant, especially after having released its right to do so by releasing the funds due appellant, set forth in its Notice of Levy.

Apparently the government takes the position that it owes the taxpayers no duties or responsibilities. Does not the government owe the taxpayers the duty of informing them of all information in its possession which is helpful and beneficial to the taxpayers, especially in tax proceedings?

As to Point 5. Appellees have once again failed to factually demonstrate, in the face of the statistical record (A-7, Appellant's Brief), that the summons was not issued in a pending or contemplated criminal proceeding pertaining to the years 1966 to 1972, and they have not shown their legitimate purpose, or that the contents of the records sought are not already in the possession of the Commissioner.

As to Point 6. At no time in these proceedings have the appellees undertaken to controvert or dispute the factual content of appellant's Affidavit (A8, A9, A10, A11, A12, Appellant's Brief), thereby clearly indicating a plan and purpose on their part to continue, together with their undenied co-conspirators, to trample the constitutional rights of appellant, its bland, unsupported conclusions in Appellees Brief to the contrary, notwithstanding.

The contents of the first paragraph on page 2 of Appellant's Brief has never been explained or denied and constitutes bad faith.

It should be noted that in the District Court the government chose to ignore appellant's letter of January 2, 1973, and as of now, it has failed to inform this Court and the lower Court of its reasons, if any, for doing so. It should also be noted that in response to appellant's letter of September 7, 1976 Mr. Lyons made reply by his letter of September 13, 1976 as follows:

"Dear Mr. Sluk: This is to acknowledge receipt of your letter dated September 7, 1976. I am not familiar with your correspondence with Mr. Takes of our Albany office, however, I have requested a copy of your 1973 letter to Mr. Takes from our Albany office. In addition, I have requested any other document that are available pertaining to the subject matter discussed in the correspondence between yourself and Internal Revenue. When the requested information is received, I shall get in touch with you."

Again the government ignored appellant's requests after having promised to supply the requested information. Quite obviously, the government has no intention of keeping any promise, in the light of the fact that when the letter of September 13, 1976 was written, the Summons dated September 9, 1976 had already been prepared --- four days before the letter was written. As of now, no excuse, reason, or justification has been made by the government for its failure to fulfill its duties to the people to keep its promises. Is this not a kind of "stonewalling" indulged in by a prior administration?

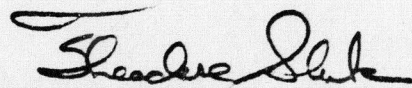
In Summary, the King can do no wrong, but, under the United States Constitution the government can do many wrongs by defying the Constitution by such conduct as has been evidenced in these proceedings, especially that to which reference is made in the letter of January 2, 1973(A-10, A11, Appellant's Brief). For instance, the appellees have for reasons never disclosed failed to establish the legality of the "tax sale" of 1967 which destroyed appellant's ability to continue in business. Also, all the lawsuits to which reference is made in Appellees Brief are null and void as is the order appealed herein, by reason of the government's lawlessness as set forth by appellant and undenied by appellees. Having successfully, and the government has never denied this, destroyed appellant and appellant's business it should not now be permitted to continue harrassing appellant and appellant's family through fishing expeditions, under the guise of pursuing so called "tax proceedings".

The continued government behavior about which complaint was made in the ignored letter of January 2, 1973 (A10, A11, Appellant's Brief) requires that the summons issued by the Internal Revenue Service be dismissed with prejudice and that the government be barred for all time in the pursuit of tax proceedings against appellant for the years 1966 through 1976. To judicially

determine otherwise would be to place in serious jeopardy, at the whim and caprice of the government, the very essence of free government as guaranteed by the Bill of Rights and the United States Constitution.

It must not be overlooked that for all practical purposes, in this case, the government has thumbed its nose at appellant, and has done so all through these proceedings in the District Court and this Court, and by the same token, it is thumbing its nose at this Court by not supplying the information requested by appellant over 4 years ago by letter dated January 2, 1973. (A-10).

Respectfully submitted,



THEODORE SLUK, Pro Se.

Dated: October 27, 1977
Pawling, New York.

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within
found to be a true and complete copy. has been compared by the undersigned with the original and

Dated:

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is
the attorney(s) of record for
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

deponent is the
read the foregoing
the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and
belief, and that as to those matters deponent believes it to be true. , being duly sworn, deposes and says that
in the within action; that deponent has
and knows the contents thereof; that

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

ss.:

CORPORATE VERIFICATION

of
named in the within action; that deponent has read the foregoing
and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein
stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. , being duly sworn, deposes and says that deponent is the
the corporation

This verification is made by deponent because

is a corporation. Deponent is an officer thereof, to-wit, its

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this

day of

19

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the
upon

day of

19

deponent served the within

in this action, at

attorney(s) for

the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in -- a post office -- official
depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this

day of

19

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the

day of

19

at No.

deponent served the within

upon
the

herein, by delivering a true copy thereof to h personally, Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me, this

day of

19

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney for

Index No. 77-6077

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA AND
JOHN LYONS OF THE INTERNAL
REVENUE SERVICE,

Appellees,

v.

THEODORE SLUK,

Appellant.

APPELLANT'S REPLY

THEODORE SLUK, Pro Se

~~XXXXX~~ for

Office and Post Office Address, Telephone

Post Office Box 155
Pawling, New York 125

To ROBERT B. FISKE, JR.

Attorney for UNITED STATES OF AMERICA

Service of a copy of the within

is hereby admitted

Dated,

Attorney for

NO. 2081 B GOLDSMITH BROS., N. Y. 10036, (212) 688-7000

ALS

D

COPY RECEIVED

Robert B. Fiske Jr.
UNITED STATES ATTORNEY

10/28/77

Marian F. Bryant

64

RICA

ed.